

[Rel. No. IC-20958; File No. 812-9308]

The Paul Revere Variable Annuity Insurance Company, et al.

March 15, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Paul Revere Variable Annuity Insurance Company ("Paul Revere"), Paul Revere Separate Account One (the "Account"), certain separate accounts that may be established by Paul Revere in the future to support certain variable deferred annuity contracts issued by Paul Revere (the "Other Accounts", collectively, with the Account, the "Accounts") and Marsh & McLennan Securities Corporation ("Marsh McLennan").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting Paul Revere to deduct from the assets of the Accounts the mortality and expense risk charge imposed under certain variable annuity contracts issued by Paul Revere (the "Existing Contracts") and under any other variable annuity contracts issued by Paul Revere which are materially similar to the Existing Contracts (the "Other Contracts", together, with the Existing Contracts, the "Contracts").

FILING DATE: The application was filed on October 26, 1994 and amended and restated on January 23, 1995. Applicants represent that an amendment to the application will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 10, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549.

Applicants: Judith A. Hasenauer, Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, P.O. Box 5108, Westport, Connecticut 06881.

FOR FURTHER INFORMATION CONTACT:

Barbara J. Whisler, Senior Attorney, or Wendy F. Friedlander, Deputy Chief, both at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Paul Revere, a stock life insurance company organized under Massachusetts law, is a wholly owned subsidiary of The Paul Revere Life Insurance Company, a Massachusetts corporation. The Paul Revere Life Insurance Company is wholly owned by the Paul Revere Corporation (the "Corporation"), also a Massachusetts corporation. The application states that, prior to October 26, 1993, the Corporation was wholly owned by Textron, Inc., a Delaware corporation. On that date, Textron, Inc. sold 17% of the Corporation to the public and retained 83% of the outstanding shares of the Corporation. The Account, established August 18, 1994 under Massachusetts law, is registered with the Commission as a unit investment trust. The Account will fund the Existing Contracts issued by Paul Revere. Applicants incorporate the registration statement on Form N-4 for the Account and the Existing Contracts (File No. 33-83320) into the application by reference. The Account is divided into a number of subaccounts, each of which invests in an underlying investment option. All of the investment options are registered with the Commission under the 1940 Act as open end management investment companies.

2. Marsh McLennan, a wholly owned subsidiary of Seabury & Smith, Inc., which his, in turn, a wholly owned subsidiary of Marsh & McLennan Companies, Inc., is a broker dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc. Marsh McLennan will serve as the distributor of the Contracts.

3. The Existing Contracts are individual flexible premium variable annuity deferred contracts which provide for a guaranteed death benefit during the accumulation phase. Paul Revere proposes to market the Existing Contracts to members of various

associations that sponsors benefit programs. The minimum initial premium is \$2,500 and the minimum for subsequent premiums is \$500. If the owner of an Existing Contract has elected the automatic premium option, a minimum payment of \$200 will be accepted. The maximum total premium payments which Paul Revere will accept is \$1,000,000. The application states that there are no charges for sales load. Therefore, neither premiums nor amounts withdrawn are subject to a charge for sales load.¹

4. Applicants state that the current practice of Paul Revere is to deduct for premium taxes when those taxes become due and payable to the states. Thus, premium taxes relating to a Contract may be deducted from either the premium payments made or the value of the Contract. The application states that premium taxes generally range from 0% to 4%.

5. Paul Revere presently permits unlimited transfers. The owner of an Existing Contract may transfer all or part of the interest in a subaccount to another subaccount; or, during annuitization, from a subaccount to the general account of Paul Revere. These transfers are permitted without charge so long as the designated number of transfers has not been exceeded. If transfers are made in excess of the free number of transfers, presently unlimited, Paul Revere will deduct a transfer fee from the amount transferred equal to the lesser of \$25 or 2% of the amount transferred. The minimum amount which may be transferred is \$500 (from one or multiple subaccounts); however, the entire interest in the subaccount must be transferred, if, prior to or as a result of the transfer, the interest in the subaccount is less than \$500.²

6. On each Contract anniversary, Paul Revere deducts a Contract maintenance charge of \$25 from Contracts with a Contract value of less than \$25,000. During annuitization, the Contract maintenance charge is \$2.00 per month for all Contracts and is deducted from annuity payments. The application states that the fee is to reimburse Paul Revere for its administrative expenses. Applicants further state that the charge has been set at a level so that, when

¹ Applicants represent that an amendment to the application will be filed during the notice period and that the amendment will include the representation that the Contracts are not subject to a charge for sales load.

² Applicants represent that an amendment to the application will be filed during the notice period and that the amendment will indicate the requirements for transfers from one or more subaccounts.

taken together with the annual administrative charge, Paul Revere will not make a profit from the two charges assessed for administration.

7. Paul Revere deducts an annual administrative charge equal to .15% of the average daily net asset value of the Account. Applicants represent that this charge, together with the Contract maintenance charge, is to reimburse Paul Revere for expenses incurred in establishing and maintaining both the Account and the Contracts. Applicants also state that Paul Revere does not intend to profit from this charge and that Paul Revere will monitor the charge to ensure that it does not exceed expenses. Applicants state that they will rely upon Rule 265a-1 under the 1940 Act in deducting both the Contract maintenance charge and the annual administrative charge.

Paul Revere will impose a daily charge equal to an annual effective rate of .80% of the value of the net assets of the Account to compensate Paul Revere for assuming certain mortality and expense risks in connection with the Contracts. Applicants state that approximately .50% of the .80% charge is attributable to mortality risk while approximately .30% is attributable to expense risk. The application states that Paul Revere reserves the right to increase the charge to a maximum of 1.25%. If the mortality and expense risk charge is insufficient to cover actual costs of the risks undertaken, Paul Revere will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Paul Revere and will be available for any corporate purpose, including payment of expenses relating to the distribution of the Contracts. The application states that Paul Revere expects a profit from the mortality and expense risk charge.

9. Applicants state that the mortality risk borne by Paul Revere consists of: (a) The risk of guaranteeing to make monthly annuity payments in accordance with the annuity option selected by the Contract owner regardless of how long the annuitant may live; (b) the risk of guaranteeing the annuity purchase rates, for either a fixed or a variable annuity, for the annuity options under the Contracts; and (c) the risk of guaranteeing a death benefit.

10. Applicants state that Paul Revere assumes an expense risk under the Contracts. According to Applicants, this is the risk that the charges for administrative services under the Contracts will be insufficient to cover actual administrative expenses.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks under the Contracts. Applicants state that the requested extension of relief to the Other Accounts and the Other Contracts is appropriate in the public interest. Applicants opine that the relief will promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications and will, therefore, reduce administrative expenses and maximize efficient use of resources. Applicants assert that the delay and expense involved in having to repeatedly seek exemptive relief would impair the ability of Paul Revere to take advantage effectively of business opportunities as those opportunities arise. Applicants posit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Finally, Applicants state that were Paul Revere required to seek repeated exemptive relief with respect to the issues addressed in the application, no additional benefit or protection would be provided to investors through the redundant filings.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants assert that the charge for mortality and expense risks is reasonable compensation for the risks assumed.

4. Applicants represent that the proposed charge of .80% and the maximum charge of 1.25% for the mortality and expense risks assumed by Paul Revere is within the range of industry practice with respect to comparable annuity products.

Applicants state that this representation is based upon an analysis of publicly available information regarding mortality risks, taking into

consideration such factors as: the guaranteed annuity purchase rates; the expense risks, the estimated costs for product features; and the industry practice with respect to comparable contracts. Applicants represent that Paul Revere will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of the analysis by Paul Revere.

5. Applicants assess no charge for sales load. To the extent that distribution costs are not covered, Paul Revere will recover its distribution costs from the assets of the general account. These assets may include that portion of the mortality and expense risk charge which is profit to Paul Revere. Applicants represent that Paul Revere has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be maintained by Paul Revere at its principal office and will be made available to the Commission.³

6. Paul Revere also represents that the Accounts will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by either the company's board of directors or the board of trustees, as applicable, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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³ Applicants represent that an amendment to the application will be filed during the notice period and that such amendment will include the representations contained in paragraph 5 of this notice.